

REMARKS

Claims 1, 3 - 12 and 14 - 20 are in this application and are presented for consideration.

Applicant acknowledges the Examiner's indication of allowable subject matter, and Applicant thanks the Examiner for indicating allowable subject matter.

The non-allowed claims have been rejected as either being anticipated by, or obvious over, Wallace.

In the rejection the Examiner appears to state that the "clearing" in the present claims is either inherent or obvious in Wallace because it is well known that when a computer with memory reads any type of memory the processor will clear the current mode of operation in order to execute the command of the code from which the memory provides. The "clearing" set forth in the present application is not the erasing of the current mode of operation in order to execute new commands from a memory. Instead the clearing of the present invention is instead intended to indicate that a mode of operation is made available. The "clearing the modes" in the present invention is similar to when an aircraft is "cleared for takeoff". Support for this can be found in the present specification on page 3 lines 4 - 6 and 9 - 10, and page 4 lines 5 - 6. In the present invention the modes of operation are already installed in the respirator. As an example, the respirator can have modes such as Intermittent Mandatory Ventilation, Continuous Positive Airway Pressure, or High Frequency Ventilation, see page 1 lines 5 - 7. Once these modes of operation have been developed by a manufacturer of respirators, the cost to the manufacturer for adding one of these additional modes to a respirator is often very small. However the cost to the purchaser must be large to cover the

developmental costs. Therefore purchasers often do not want to pay for all of the possible available modes of operation because doing so would involve a very large initial cost. Applicant has found that purchasers of respirators usually only need a few modes initially, and then the needed modes may change at a later date, such as for another patient. Applicant has also found that the adding of additional modes to a respirator at a later date can be costly because this adding requires a good deal of technical skill and the respirator is usually not readily available by persons of the required skill, see page 2 lines 5 - 11.

Therefore Applicant has provided a respirator where many modes of operation are embedded in the respirator, and the purchaser only pays for the modes of operation that are initially desired. The non paid modes are disabled. If and when additional modes of operation are desired, the purchaser pays for a data storage medium, which can be connected to a respirator, and "clears" the desired modes of operation for actual operation. Therefore the "clearing" in the present invention involves making available modes of operation which have previously not been available.

Applicant has reviewed Wallace, and finds no teaching nor suggestion of any step of clearing modes of operation so that they become available, especially where these modes of operation were not previously available. Applicant also finds no suggestion or motivation in Wallace which would lead a person of ordinary skill in the art to have modes that are unavailable, and then to make those modes of operation available upon the reading of data from a removable storage medium. Since this step of clearing modes of operation to make them available, is not taught nor suggested in Wallace, Wallace cannot cause the present claims to

be anticipated, or obvious. It is Applicant's position that the present claims therefore define over Wallace.

Claim 11 sets forth the further step of writing code into the data storage medium element when the data storage element is disconnected from the respirator. Applicant has reviewed Wallace, and finds no teaching nor suggestion of this step in Wallace. In the present invention, the manufacture of the respirator writes data into the storage element which will clear, or make available, a mode of operation when the purchaser inserts the storage element into the respirator. In Wallace, the memory structures appear to be always connected to the ventilator. Applicant could find no teaching nor suggestion in Wallace of any memory being removed from a respirator and written to, while that memory was disconnected from a ventilator. Applicant further finds no suggestion or motivation which would lead a person of ordinary skill in the art to write to a memory of Wallace while the memory was disconnected from the ventilator. Claim 11 therefore cannot be anticipated by, or obvious in view of, Wallace.

The independent claims also set forth the step of encoding the data into a code on the storage element. As one can appreciate, a manufacture of respirators would want to have the data for unlocking additional modes to be secret, so that only persons authorized by the manufacture are able to clear, or make available, the additional modes of operations. Applicant finds no teaching nor suggestion in Wallace of the step of encoding data, especially the data that specifies a number of different available modes of operation of a respirator. Wallace does not appear to be concerned with unauthorized use of a ventilator, and Wallace does not even

describe data which would make previously unavailable modes available. Therefore it is quite clear that Wallace cannot teach nor suggest the step of encoding such data. The independent claims therefore further define over Wallace.

The rejection of claims 12 and 17 appears to state that the memory of Wallace is fully capable of having data that specifies a number of different available modes of respiration, and that the data and the code also fully capable of determining the clearing of all the available modes of operation on the respirator. Applicant notes that the mere fact that a prior art device may be capable of being modified to run the way the present application is run, is not sufficient for an obviousness rejection according to U.S. patent regulations. The MPEP 2143.01 specifically states that "the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness". Therefore it is Applicant's position that the fact that Wallace is capable of the steps of claim 12, does not cause the steps of claim 12 to be obvious in view of Wallace. Claim 12 and its dependent claims therefore further define over Wallace.

Applicant again thanks the Examiner for indicating allowable subject matter. If the Examiner has any comments or suggestions which would further favorable prosecution of this application, the Examiner is invited to contact Applicant's representative by telephone to discuss possible changes.

At this time Applicant respectfully requests reconsideration of this application, and based on the above amendments and remarks, respectfully solicits allowance of this application.

Respectfully submitted  
For Applicant,

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